

On January 20, 2021, President Biden was inaugurated and following his inauguration he signed an executive Order entitled Proclamation on the Termination of Emergency With Respect To The Southern Border Of The United States And Redirection of Funds Diverted to Border Wall Construction (the “Proclamation”). See Exhibit A, Proclamation on the Termination of Emergency. With Respect To The Southern Border Of The United States And Redirection of

Funds Diverted to Border Wall Construction, 2021 WL 197402 (January 20, 2021), available at <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/proclamation-termination-of-emergency-with-respect-to-southern-border-of-united-states-and-redirection-of-funds-diverted-to-border-wall-construction/>. The Court can take judicial notice of the Proclamation and Defendant requests the Court take judicial notice of the Proclamation. See FED.R. EVID. 201 (b).

Among other things, the Proclamation provides as follows:

(a) The Secretary of Defense and the Secretary of Homeland Security, in consultation with the Director of the Office of Management and Budget, shall direct the appropriate officials within their respective departments to:

(i) pause work on each construction project on the southern border wall, to the extent permitted by law, as soon as possible but in no case later than seven days from the date of this proclamation

* * *

(b) The pause directed in subsection (a)(i) of this section shall apply to wall projects funded by redirected funds as well as wall projects funded by direct appropriations. . . .

Exhibit A, Proclamation.

“[E]xecutive orders clearly carry the force and effect of law if they are issued pursuant to constitutional or statutory authority.” *Legal Aid Soc. of Alameda Cty. v. Brennan*, 381 F. Supp. 125, 130 (N.D. Cal. 1974), *aff’d in part*, 608 F.2d 1319 (9th Cir. 1979) (“This particular executive order and its direct antecedents have consistently been held to be based on statutory authority resting with the President to provide for procurement, utilization, and management of government property.” (citing *Contractors Ass’n of Eastern Pennsylvania v. Secretary of Labor*, 442 F.2d 159, 166-171 (3d Cir.), *cert. denied*, 404 U.S. 854, 92 S.Ct. 98, 30 L.Ed.2d 95 (1971); *Farkas v. Texas Instrument, Inc.*, 375 F.2d 629, 632 n. 1 (5th Cir.), *cert. denied*, 389 U.S. 977, 88 S.Ct. 480, 19 L.Ed.2d 471 (1967))). The Proclamation orders that all construction work on the border wall project

should “pause” and the Defendants seek an order from the Court to ensure that all construction work is “pause[d]” pursuant to the Proclamation.

Additionally, Defendant anticipates the Proclamation, and Government action following the ordered pause in the border wall project, is very likely to cause a change in the project. Any change in the project could have dramatic impacts on the possession and valuation issues the parties will litigate.

So as to avoid unnecessary expenses associated with expert witnesses that have been or will be retained to consider value-related issues on the subject property and any subsequent change in the border wall project, the Defendants request that the Court order a one hundred twenty (120) day stay in these condemnation proceedings.

“The District Court has broad discretion to stay proceedings as an incident to its power to control its own docket.” *Clinton v. Jones*, 520 U.S. 681, 706 (1997); *Nevada v. United States Dep’t of Labor*, 227 F. Supp.3d 696, 698 (E.D. Tex. 2017) (“A district court has broad discretion to stay proceedings in the interest of justice and to control its docket.”). It would be in the interest of justice to stay these proceedings, including the interests of both parties and the interest of judicial efficiency to the Court. See *Cheney v. U.S. Dist. Court for Dist. of Columbia*, 542 U.S. 367, 385 (2004) (reasoning that “the high respect that is owed to the office of the Chief Executive. . . is a matter that should inform the conduct of the entire proceeding, including the timing and scope of discovery” (quoting *Clinton v. Jones*, 520 U.S. 681, 707 (1997))).

PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendants pray that their Motion to Stay Condemnation Proceedings be granted, and the United States shall provide a status report updating

the Court at the end of the stay period, and granted for such other and further relief to which they may show themselves to be justly entitled.

Respectfully submitted,

Dated: March 26, 2021

Respectfully submitted,

/s Victor Rodriguez

Victor Rodriguez
Attorney-in-Charge
Texas Bar No. 24041809
S.D. Tex. Bar No. 562260
121 N. 10th Street
McAllen, Texas 78501
Telephone: (956) 630-3266
victor@vrodriguezlaw.com

Counsel for Defendant

**ACTING UNITED STATES ATTORNEY
JENNIFER B. LOWERY**

By: /s N. Joseph Unruh

N. JOSEPH UNRUH
Assistant United States Attorney
United States Attorney
Southern District of Texas No. 1571957
Texas Bar No. 24075198
1701 W. Bus. Hwy. 83, Suite 600
McAllen, TX 78501
Telephone: (956) 618-8010
Facsimile: (956) 618-8016
Email: Neil.Unruh@usdoj.gov

Attorney in Charge for United States

CERTIFICATE OF SERVICE

On March 26, 2021, I served the foregoing document via the District Clerk's CM/ECF system and all counsel of record will be served accordingly.

/s Victor Rodriguez

Victor Rodriguez